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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,210	12/08/2003	Marc Richelsoph	BBM-141US2	2079
23122	7590	01/22/2008		
RATNERPRESTIA P O BOX 980 VALLEY FORGE, PA 19482-0980			EXAMINER SHAFFER, RICHARD R	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 01/22/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/730,210	Applicant(s) RICHEL SOPH ET AL.	
	Examiner Richard R. Shaffer	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION:

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10, 13-17, 21 and 61 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 15-17, 21 and 61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 14th, 2007 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1- 8, 10, 15-17 and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In claim 1, applicant claims that the eccentric opening in the retaining mechanism is eccentric to the center axis of the retaining mechanism and can be rotated from an eccentric to a concentric orientation relative to the through hold in the aperture of the plate.

Only in the claims as originally filed did such eccentric and concentric language appear. From the disclosure, it is not clear to one having ordinary skill in the art how such an arrangement is possible. It appears applicant utilizes a circular hole, with a circular locking ring. The locking ring has an eccentric hole. However, if merely placing a circular ring in a circular aperture, with the circular ring having an eccentric hole, the hole will always be eccentric relative to the central point of the aperture.

Double Patenting

It is noted that applicant intends to address the provisional double patenting rejection at a later time. Until that time, the rejection will stand as follows.

Claims 1-8, 10, 15-17, 21 and 61 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 22, 26-33, 35, 36, 42, 54 and 55 of copending Application No. 10/401,997. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference lies in the fact that the copending application recites functionally that the screw retaining means is for use with a bone plate. Therefore, it would have been obvious to one having ordinary skill in the art to have provided a bone plate for the screw retaining means. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 61 is rejected under 35 U.S.C. 102(b) as being anticipated by Ralph et al (US Patent 5,607,426).

Ralph et al disclose an assembly (**Figures 1-8**) comprising: a curved base plate (**100, Figure 3a**) having at least one aperture (**110**); an insert means (**142**) capable of accommodating a bone screw and a screw retaining mechanism.

Claims 1-8, 10, 15-17 and 61 are rejected under 35 U.S.C. 102(b) as being anticipated by Michelson (US Patent 6,138,550).

Michelson discloses (**Figures 1-97D**) a device comprising:
[First Interpretation] a base plate (**Figures 1-8, 28 and 33**) having an aperture (**14 and 8 together; 12 and 6 together; or 408 and 402 together**) defining a through opening; a screw retaining means (**20**) rotatable about a center axis; the center axis extends through the through opening; the screw retaining means having an eccentric hole (**22, 412**); when the screw retaining means (**20**) rotates, the eccentric hole rotates between a concentric and eccentric position relative to the through opening (due to the through opening defining multiple centers) which receive screws (**30**); the aperture is aligned along the longitudinal axis as well as being at an acute angle (0 degrees) relative to it; and the retaining mechanism being a washer/disk/clip/ring and is flush with the upper surface of the plate. The retaining mechanism is located in a radially and outwardly recessed grooves in the wall of the aperture.

[Second Interpretation] a base plate (**Figures 40-45 and 64-67**) having an aperture (**504**) defining a through opening; a screw retaining means (**Figure 64 or 66**) rotatable about a center axis; the center axis extends through the through opening; the screw retaining means having an eccentric hole (**510 or 524**); when the screw retaining means rotates, the eccentric hole rotates between a concentric and eccentric position relative to the through opening (due to the through opening defining multiple centers), one center receives the screw (**30**); the aperture is aligned along the longitudinal axis as well as being at an acute angle (0 degrees) relative to it; the retaining mechanism being a washer/disk and is flush with the upper surface of the plate; the retaining mechanism located in a radially and outwardly recessed groove in the wall of the aperture.

Both interpretations of Michelson clearly define a base plate with the screw retaining mechanism optionally being referred to as an "insert means" as set forth in claim 61. The retaining mechanism is inherently capable of accommodating a bone screw and a bone screw retaining mechanism.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson in view of Campbell et al (US Patent 6,602,255).

Michelson discloses all of the claimed limitations (in regard to the first interpretation utilizing the base plate of **Figure 28**) except for a c-shaped retaining mechanism to be collapsible for insertion into the groove of the aperture.

Campbell et al teach the use of a collapsible c-ring for quick insertion while still preventing screw back out. It would have been obvious to one having ordinary skill in the art at the time the invention was made to design a C-shaped ring with protrusions **414** to allow for quick insertion (removing the need to first properly align the retaining mechanism relative to opening **402**) and then allowing one to merely rotate the protrusions **414** to block the screw. This would either hasten surgical time or allow for quick manufacture by including the retaining mechanism initially without the need for time-consuming alignment.

Response to Arguments

Applicant's arguments filed December 14th, 2007 have been fully considered but they are not persuasive.

Applicant asserts the newly added limitation of "positioned within the aperture such that the center axis extends through the through opening" in conjunction with the previously presented limitations overcome the prior art reference to Michelson. This is not found persuasive since the complex aperture as previously interpreted, does indeed define a through opening (merely with multiple centers).

In regard to claim 61, applicant continues to argue functional language. The claim states "insert means ... **for** accommodating the bone screw and a screw retaining

mechanism." There is no requirement set forth that the bone screw and screw retaining mechanism are positively recited.

Conclusion

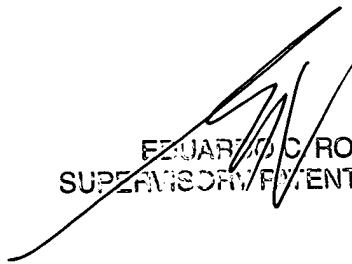
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Richard Shaffer
January 15th, 2007



EDUARDO C. ROBERT
SUPERVISOR/PATENT EXAMINER